

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WILLIAM C. PIERCE,)	
)	
Plaintiff,)	8:06CV259
)	
v.)	
)	
DR. BAKER, et al.,)	MEMORANDUM AND ORDER
)	
Defendants.)	
_____)	

This matter is before the Court after plaintiff moved for voluntary dismissal of this case and for a refund of his filing fee (Filing No. 6). When the Court explained that the filing fee could not be refunded, the plaintiff elected to withdraw the voluntary dismissal (Filing No. 8). Thus, Filing No. 6 will be denied as moot.

The plaintiff moved to convert this case to a class action (Filing No. 9). However, he later moved to withdraw that motion (Filing No. 14). The motion to withdraw will be granted and the motion to convert to class action will be deemed withdrawn.

In his Motion of Course (Filing No. 10), and his Motion for Summary Judgment (Filing No. 12), the plaintiff seeks immediate relief based on the allegations of the complaint. As a matter of due process, the defendants are entitled to be heard in this matter, and they have not yet been served with process or notified of the plaintiff's claims against them. Consequently,

these motions are premature and will be denied. Plaintiff's Motion to Appear in Person (Filing No. 16) for oral argument on the motion for summary judgment will also be denied as the summary judgment motion has been denied at this time.

Similarly, plaintiff's Motion to Enforce Discovery (Filing No. 15) is premature as the defendants have not yet appeared in the case. In addition, once the defendants have been served with process and appear in the case through counsel, the plaintiff may serve his discovery requests directly on the attorney for the defendant(s). The plaintiff is entitled to conduct discovery without leave of court. While discovery does not go through the court, and instead is conducted by mailing discovery requests directly to the attorney for a represented party, the plaintiff may file a motion to compel discovery if a defendant fails to respond appropriately to the plaintiff's discovery requests. If responses to discovery requests are not forthcoming or are inadequate, the plaintiff may file a motion to compel discovery, attaching as exhibits the discovery requests, any letters evidencing efforts to work out the discovery dispute(s) and any discovery responses and objections.

Plaintiff's Motion for Status (Filing No. 11) is granted, and this memorandum and order sets forth the status of this action. Because the complaint was filed by a prisoner, the case is subject to initial review pursuant to 28 U.S.C. § 1915A

of the PLRA, which directs the court to screen prisoner complaints. Magistrate Judge F. A. Gossett has conducted that initial review (Filing No. 17).

IT IS ORDERED:

- 1) That Filing Nos. 6 and 9 are withdrawn at the plaintiff's request;
- 2) That Filing Nos. 10, 12, 15 and 16 are denied as premature;
- 3) That Filing Nos. 11 and 14 are granted.

DATED this 16th day of May, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court